

**REMARKS**

This is a full and timely response to the outstanding non-final Office Action mailed May 20, 2004 (Paper No. 5). Upon entry of this response, claims 1-2, 4-8, 10-15, 17-21, 23-28, 30-34, 36-41, 43-47, 49-63 are pending in the application. In this response, claims 1, 2, 4-8, 14, 15, 17-21, 27, 30-34, 40, and 43-47 have been amended, claims 54-63 have been added, and claims 3, 9, 16, 22, 29, 35, 42, and 48 have been cancelled. Applicants respectfully request that the amendments being filed herewith be entered and request that there be reconsideration of all pending claims.

1. **Allowable Subject Matter**

Applicants appreciate the Examiner's allowance of claims 13, 26, 39, 52, and 53. Applicants also acknowledge the Examiner's indication in the outstanding Office Action that claims 2-12, 15-25, 28-38, and 41-51 would be allowable if rewritten to include all of the limitations of the base claim and any intervening claims. Accordingly, Applicants have amended claims 4, 17, 30, and 43 to include the limitations of their respective base claims, such that claims 4, 17, 30, and 43 are now independent claims.

Dependent claims 2, 5-7, 10-15, 18-20, 31-33, and 43-46, which depend from now independent claims 4, 17, 30, and 43, are allowable as a matter of law for at least the reason that the dependent claims 2, 5-7, 10-15, 18-20, 31-33, and 43-46 contain all features of independent claims 4, 17, 30, and 43. See, *e.g.*, *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). Therefore, the Examiner is respectfully requested to place claims 4, 17, 30, and 43 in condition for allowance.

Applicants wish to clarify that the amendments to claims 4, 17, 30, and 43 are made for purposes of presenting the claims in an independent claim format as requested by the Examiner, and not in response to any rejections made based on cited art. Because a dependent claim as a

matter of law inherently contains all of the limitations of its respective parent independent claim, and any intervening claims, the amendments to claims 4, 17, 30, and 43 do not narrow the scope of claims 4, 17, 30, and 43 as originally filed.

2. Rejection of Claims 1, 14, 27, and 40 under 35 U.S.C. §103

Claims 1, 14, 27, and 40 have been rejected under §103(a) as allegedly unpatentable over *Gitlin et al.* (U.S. 5,278,689). Applicant respectfully submits that these rejections have been overcome by the claim amendments made herein, or have been rendered moot by claim cancellation. A proper rejection of a claim under 35 U.S.C. §103 requires that a basis for obviousness be disclosed for each element of the claim. *See, e.g., W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 U.S.P.Q. 303, 313 (Fed. Cir. 1983).

a. Claims 1, 14, 27, and 40

Applicants respectfully submit that *Gitlin et al.* fails to teach, disclose or suggest at least “a communication message including a preamble, the preamble operating to frame the message and to delimit the message from silence” as recited in claim 1. Similarly, *Gitlin et al.* fails to teach, disclose or suggest at least “applying a preamble to a communication message, the preamble operating to frame the message and to delimit the message from silence” as recited in claims 14 and 40. Finally, *Gitlin et al.* fails to teach, disclose or suggest at least a “means for applying a preamble to a communication message, the preamble operating to frame the message and to delimit the message from silence” as recited in claim 27.

*Gitlin et al.* appears to disclose an optical network in which:

messages and/or packets are converted to an optical signal upon their entry into the network, where they are then forwarded and switched as optical signals within the network. At the destination, they are converted back into an electrical signal. (Col. 2, lines 23-28).

The system described in *Gitlin et al.* is an “all optical network” (links, switching nodes and network interfaces are fully optical) in which the switching nodes are not required to operate at peak transmission rate. (Col. 2, lines 30-35; lines 60-65). *Gitlin et al.* accomplishes this by separating switching from transmission, and “separation is obtained by using different bit rates for the header field, the trailer field, and the data field of the optical packet.” (Col. 2, line 60 to Col. 3, line 5).

In contrast, Applicants’ claimed invention, as defined in claims 1, 14, 27, and 40 utilizes a preamble rather than a header. (See Specification, p. 3, lines 11-22). Applicant has amended claims 1, 14, 27, and 40 to more particularly point out and distinctly claim the subject matter which Applicant regards as his invention. Claims 1, 14, 27, and 40 now recite “a preamble operating to frame the message and to delimit the message from silence.” *Gitlin et al.* provides no details about the “header,” and Applicants can find nothing in *Gitlin et al.* to suggest that this “header” is equivalent to the “preamble operating to frame the message and to delimit the message from silence” recited in claims 1, 14, 27, and 40.

For at least the reason that *Gitlin et al.* fails to disclose, teach or suggest “a communication message including a preamble, the preamble operating to frame the message and to delimit the message from silence” or “applying a preamble to a communications message, the preamble operating to frame the message and delimit the message from silence,” Applicants respectfully submit that *Gitlin et al.* does not anticipate claims 1, 14, 27, and 40. Therefore, Applicants request that the rejection of claims 1, 14, 27, and 40 be withdrawn.

### 3. Newly Added Claims

Applicants submit that new claims 54-63 are allowable over the cited prior art, at least for the reason that each of new claims 54-63 is dependent on a claim indicated in the outstanding

Office Action as being allowable. Furthermore, Applicants submit that no new matter has been added in the new claims 54-63, since each incorporates subject matter similar to an already pending claim. Therefore, Applicants request that the Examiner enter and allow the above new claims.

**CONCLUSION**

Applicants respectfully request that all outstanding objections and rejections be withdrawn and that this application and presently pending claims 1-2, 4-8, 10-15, 17-21, 23-28, 30-34, 36-41, 43-47, and 49-63 be allowed to issue. If the Examiner has any questions or comments regarding Applicants' response, the Examiner is encouraged to telephone Applicants' undersigned counsel.

Respectfully submitted,

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